

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

TIMOTHY O'NEIL,

Plaintiff,

v.

SHERIFF VICTOR HILL,

Defendant.

Civil Action File No. 1:21-cv-04173-
AT-CCB

Plaintiff's Response to Defendant Hill's Motion to Stay Discovery

The Court should deny Defendant Hill's motion because there is little possibility that Defendant will be granted and eliminate the need for discovery. As courts have explained, a stay of discovery is warranted only where there is a meaningful possibility that the defendant's motion will be granted:

The District Court has broad discretion to stay proceedings as ... incident to its power to control its own docket," but "[t]he proponent of a stay bears the burden of establishing its need." Clinton v. Jones, 520 U.S. 681, 706, 708 (1997) (citations omitted). "A stay of discovery is appropriate where the movant shows good cause and reasonableness." Krukever v. TD Ameritrade, Inc., 2018 WL 2382008, at *1 (S.D. Fla. May 23, 2018) (citations and internal quotation marks omitted). When reviewing a motion to stay discovery, "a district court 'must balance the harm produced by the delay in discovery against the possibility that the [pending] motion will be granted and entirely eliminate the need for such discovery.'" Arriaga-Zacarias v. Lewis

Taylor Farms, Inc., 2008 WL 4544470, at *1 (M.D. Ga. Oct. 10, 2008) (quoting Feldman v. Flood, 176 F.R.D. 651, 652 (M.D. Fla. 1997)). “In making this determination it may be helpful for the court to take a ‘preliminary peek’ at the merits of the dispositive motion to assess the likelihood that such motion will be granted.” Id.

Frankenmuth Mut. Ins. Co. v. Horne, No. 1:19-CV-091 (LAG), 2019 WL 9852792, at *1 (M.D. Ga. Aug. 19, 2019).

Here, the Court is encouraged to take a “preliminary peek” at the merits of Defendant Hill’s motion, where he submits a declaration by an employee identified only as a “sergeant” who claims that the Clayton County Jail had an unwritten grievance procedure which (1) ran counter to the written Standard Operating Procedures, and (2) was only explained to inmates verbally. There was no access to the SOP’s (not that it would have helped, given that the jail did not follow its SOP’s), there was no inmate handbook, and the jail keeps no records of informing inmates of grievance procedures.

Moreover, Plaintiff was not even processed normally, so the “normal” procedure of verbally telling inmates about unwritten procedures would not matter. Defendant Hill personally removed Plaintiff from the normal booking procedure and placed him in a segregated area where he was subjected to inhumane conditions, all out of spite.

While a stay of discovery would not be the end of the world for Plaintiff's ability to pursue this litigation, there is no compelling reason to put it off. Plaintiff would follow the adage, "Never leave that till tomorrow which you can do today." Plaintiff therefore objects to a stay as unnecessary because there is little possibility that "the [pending] motion will be granted and entirely eliminate the need for such discovery."

This 14th Day of February, 2022

ESHMAN BEGNAUD, LLC

/s/ Mark Begnaud

Mark Begnaud
Georgia Bar No. 217641
mbegnaud@eshmanbegnaud.com
Michael J. Eshman
Georgia Bar No. 365497
meshman@eshmanbegnaud.com

315 W. Ponce De Leon Ave
Suite 775
Decatur, GA 30030
404-491-0170

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **Plaintiff's Response** to **Defendant Hill's Motion to Stay Discovery** to the Clerk of Court using the CM/ECF system which will automatically send electronic mail notification of such filing to counsel of record who are CM/ECF participants:

Jack R. Hancock
jhancock@fmglaw.com
A. Ali Sabzevari
asabzevari@fmglaw.com
FREEMAN MATHIS & GARY, LLP
661 Forest Parkway, Suite E
Forest Park, GA 30297

This 14th Day of February, 2022

/s/ Mark Begnaud
Mark Begnaud
Georgia Bar No. 217641
mbegnaud@eshmanbegnaud.com

ESHMAN BEGNAUD, LLC

315 W. Ponce De Leon Ave, Suite 775
Decatur, GA 30030
(404) 491-0170